

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER MICHAEL MOON,

Defendant-Appellant.

UNPUBLISHED

December 20, 2011

No. 300357

Cass Circuit Court

LC No. 10-010108-FH

Before: HOEKSTRA, P.J., and K. F. KELLY and BECKERING, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of two counts of manufacture of controlled substances involving hazardous waste, MCL 333.7401c(2)(c); one count of possession of methamphetamine, MCL 333.7403(2)(b)(i); one count of resisting or obstructing a police officer, MCL 750.81d(1); and one count of maintaining premises for use or sale, MCL 333.7405(d). The trial court sentenced defendant as an habitual offender, third offense, MCL 769.11, to concurrent sentences of 72 months to 40 years' imprisonment for each of the two counts of manufacture of controlled substances, 18 months to 20 years' imprisonment for the possession charge, one to four years' imprisonment for resisting or obstructing a police officer, and one to four years' imprisonment for maintaining premises for use or sale. Because we find there was sufficient evidence to identify defendant as the perpetrator beyond a reasonable doubt, we affirm.

Defendant's methamphetamine-related convictions arise from evidence of methamphetamine production and use collected in and around his mother's home on two separate dates. Defendant's resisting or obstructing conviction arises from an incident occurring on March 16, 2010, when defendant fled from Deputy McKenzie Kreiner despite being ordered by her to "stop."

At trial the evidence established that police were initially called by defendant's mother to her home on March 5, 2010 to investigate a bag that defendant placed in a garbage container outside her home. The responding officers investigated the bag and discovered that it contained ingredients and equipment used for the production of methamphetamine. Samples collected from the bag tested positive for methamphetamine. On March 16, 2010, Kreiner attempted to apprehend defendant at an address in the vicinity of his mother's home, but defendant fled and escaped arrest. On March 22, 2010, defendant's mother called the police to investigate a fire in

her home. During their investigation, officers conducted a consent search of a shed behind the home, where they discovered equipment and supplies used for methamphetamine production. Police also observed what appeared to be a gas generator or a one-pot lab in the windowsill of defendant's padlocked upstairs bedroom. A warrant to search the bedroom was obtained. During the search, officers located additional evidence of methamphetamine production and use, as well as coffee filters with residue on them that later tested positive for methamphetamine.

Defendant concedes that the evidence admitted during trial was sufficient to prove that methamphetamine was produced and stored at his mother's home, and that an individual unlawfully fled from the police; however, he contends that the evidence at trial was insufficient to identify him as the perpetrator of the charged crimes. Specifically, defendant argues that Kreiner's testimony was not sufficient to identify him as the individual who obstructed because Kreiner inconsistently testified about the distance between herself and the individual who fled and about the date of the incident. Further, defendant argues that there was insufficient evidence identifying him as the person responsible for the items found in and around his mother's home and, as a result, insufficient evidence supporting his convictions for manufacture of a controlled substance, possession of methamphetamine, and maintaining premises for use or sale of methamphetamine.

We review claims of insufficient evidence de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). The evidence is viewed in a light most favorable to the prosecution to determine whether a rational jury could find that the defendant was guilty beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). It is up to the finder of fact to make decisions about the credibility of witnesses and the probative value of evidence. *Id.* at 514-515.

Identity is an essential element of every criminal offense. *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976). As with all elements, "[i]dentity may be shown by either direct testimony or circumstantial evidence." *People v Kern*, 6 Mich App 406, 409; 149 NW2d 216 (1967). Circumstantial evidence and the reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime. *People v Gayheart*, 285 Mich App 202, 216; 776 NW2d 330 (2009).

We find that there was sufficient evidence to support the jury's verdict in regard to each of defendant's convictions.

Regarding defendant's claim that the evidence did not support a finding that he was the person that resisted officer Kreiner by ignoring her command to "stop" and otherwise evading arrest, we conclude that Kreiner's testimony was sufficient to prove beyond a reasonable doubt that defendant is guilty of resisting or obstructing a police officer. A defendant is guilty of resisting or obstructing a police officer if he "assaults, batters, wounds, resists, obstructs, opposes or endangers a [police officer] who [he] knows or has reason to know is performing his or her duties." MCL 750.81d(1). "Obstruct" is defined by the statute to include "a knowing failure to comply with a lawful command." MCL 750.81d(7)(a).

Kreiner testified that she was in a marked patrol car and wearing her uniform the day she attempted to make contact with an individual that she was sure was defendant. She was certain it

was defendant because she was familiar with defendant. Kreiner testified that defendant fled when he saw her, and that she yelled “stop, police,” and instructed defendant to “come out” multiple times. She pursued defendant on foot and in her patrol car but was unable to locate him that day. Viewing this evidence in a light most favorable to the prosecution, a rational trier of fact could have found defendant guilty beyond a reasonable doubt of resisting or obstructing a police officer. Further, we find defendant’s argument that the evidence was insufficient because there were discrepancies in Kreiner’s testimony regarding the date of the encounter and the distance between her and defendant unavailing because we view the evidence in the light most favorable to the prosecution and we must resolve all conflicts in favor of the prosecution. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005).

Next, we conclude that there was sufficient evidence to establish that defendant possessed the evidence seized from the garbage container, the shed, and defendant’s bedroom that the prosecution relied upon to prove the elements of the two manufacture of controlled substances involving hazardous waste, the possession of methamphetamine, and the maintaining a premises for use or sale of methamphetamine charges.

A defendant is guilty of manufacture of a controlled substance when he “[o]wn[s] or possess[es] any chemical or any laboratory equipment that he . . . knows or has reason to know is to be used for the purpose of manufacturing a controlled substance” MCL 333.7401c(1)(b). The crime of possession of a controlled substance requires the knowing or intentional possession of the controlled substance. MCL 333.7403(1); *People v Pegenau*, 447 Mich 278, 292-293; 523 NW2d 325 (1994). Possession does not require that defendant have exclusive physical control over the substance; constructive possession and joint possession are sufficient. *People v McKinney*, 258 Mich App 157, 165-166; 670 NW2d 254 (2003). A determination that defendant had possession requires a finding that he had a right of control over the substance while aware of the drug’s presence and character. *Id.*

The evidence presented at trial established that defendant was holding the bag earlier on the same day that it was found in the garbage and searched. Further, a receipt in the bag had defendant’s name printed on it. When viewed in the light most favorable to the prosecution, this evidence is sufficient to support the jury finding that defendant owned or possessed the contents of the bag, which included chemicals and equipment used to produce methamphetamine, as well as methamphetamine itself.

In regard to the items found in the bedroom, the evidence demonstrated that the bedroom was defendant’s, that it was padlocked before the search, that only defendant and his girlfriend had keys to the padlock, and that papers in the room were addressed to defendant at the home. While defendant did not have a key to the front door of the home at the time the bedroom was searched, the evidence showed that the door to the home was only locked after 11:00 p.m. This allowed defendant access to the home. Further, although defendant’s girlfriend testified that he was with her in another state, this was contradicted by the officer who testified that she attempted to apprehend defendant in the vicinity of his mother’s home only six days before the police searched the shed outside the home and the bedroom. When viewed in the light most favorable to the prosecution, this evidence is sufficient to support a finding that defendant had access to and control over his bedroom and, consequently, constructive possession of its contents, including methamphetamine residue and equipment commonly used to produce and use

methamphetamine. Consequently, the evidence found in the bedroom was sufficient to support the jury's verdict convicting defendant of manufacture of controlled substances involving hazardous waste and possession of methamphetamine.

The remaining evidence introduced at trial was obtained from the shed behind the home. Equipment and supplies used for methamphetamine production were discovered in the shed. Testimony at trial established that, other than in defendant's bedroom and in the shed, no evidence of methamphetamine production was found anywhere else at the home. When viewed in the light most favorable to the prosecution, this information, as well as the evidence linking defendant to the material seized from the bedroom and the trash bag, supports the conclusion that the chemicals and equipment found in the shed also belonged to defendant.

Further, the prosecution offered additional circumstantial evidence implicating defendant as the perpetrator of the charged crimes. Evidence was admitted demonstrating that defendant used methamphetamine for two years before his arrest. The evidence also showed that defendant purchased pseudoephedrine or ephedrine, essential ingredients for the production of methamphetamine, 13 times in three cities within the six months before his arrest. Accordingly, we conclude that there was sufficient evidence presented for a rational jury to find beyond a reasonable doubt that defendant was guilty of manufacture of controlled substances involving hazardous waste and possession of methamphetamine.

Defendant also challenges the evidence supporting his conviction of maintaining premises for use or sale of methamphetamine. Maintaining premises for use or sale is defined by MCL 333.7405(d) as "knowingly keep[ing] or maintain[ing] a . . . place, that is frequented by persons using controlled substances . . . for the purpose of using controlled substances, or that is used for keeping or selling controlled substances" This Court has held that the phrase "keep or maintain" does not require a defendant to own or reside at the premises. In *People v Griffin*, 235 Mich App 27, 32; 597 NW2d 176 (1999), overruled in part on other grounds *People v Thompson*, 477 Mich 146; 730 NW2d 708 (2007), this Court held that a defendant need only "exercise authority or control over the property for purposes of making it available for keeping or selling proscribed drugs" As previously discussed, sufficient evidence was presented to support a rational jury's finding that defendant exercised control over his bedroom and its contents and that defendant was responsible for the methamphetamine production at the home.

Accordingly, when viewed in the light most favorable to the prosecution, the evidence presented was sufficient to support the jury's verdict finding defendant guilty of the charged crimes beyond a reasonable doubt.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering